

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KIMBERLY STIEF,

Claimant,

v.

SPOKANE FOOD SERVICES, INC.,

Employer,

and

WAUSAU UNDERWRITERS
INSURANCE COMPANY,

Surety,
Defendants.

IC 2010-000795

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

Filed May 23, 2013

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned the above-entitled matter to Referee Douglas A. Donohue. He conducted a hearing in Coeur d'Alene on October 22, 2012. Claimant was represented by Stephen Nemec. Defendants Employer and Surety were represented by the late Roger Brown. The parties presented oral and documentary evidence and later submitted briefs. The case came under advisement on January 28, 2013. The undersigned Commissioners have chosen not to adopt the Referee's recommendation and hereby issue their own findings of fact, conclusions of law and order.

ISSUES

The issues to be decided according to the Notice of Hearing are:

1. Whether and to what extent Claimant is entitled to benefits for:
 - (a) Temporary disability (TTD/TPD), and
 - (b) Medical care.

The parties expressly asserted that these identified issues refer to whether Claimant's industrial accident caused Claimant to be eligible for a total right knee replacement and

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associated temporary disability benefits. All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant contends that she tripped and stumbled on September 22, 2009, while working for McDonald's, injuring her knee. A hole punch was attached to a countertop by a cord which tangled about her foot. February 2010 surgery included a medial meniscectomy. The accident aggravated, exacerbated and accelerated underlying arthritis. Subsequent conservative care failed. Physicians have opined that a total knee replacement is reasonable and necessary as a result of the original industrial accident.

Defendants contend Claimant received all benefits due her as a result of the industrial accident. Her current need for a total knee replacement is due to a preexisting arthritic condition. Physicians have opined that the industrial accident did not contribute to the arthritic condition for which a total knee replacement has been suggested.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. Oral testimony at hearing of Claimant;
2. Claimant's exhibits 1-21 admitted at hearing;
3. Defendants' exhibits A-U, admitted at hearing; and
4. Posthearing deposition of Douglas McInnis, M.D.

FINDINGS OF FACT

The Accident

1. On September 22, 2009, Claimant was working for Employer. She had previously worked for McDonald's at other locations, sometimes as a supervisor. She began working at this McDonald's location on August 22, 2009. At the time of the industrial accident, she was working as part of the counter crew for minimum wage, \$7.25 per hour.

2. Employer used a hole punch to recognize customers' use of discount cards.

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After a certain number of punches, a customer would get a free cup of coffee. Because the hole punch moved around under the front counter and sometimes took an extra few seconds to find when a customer wanted a card punched, Employer attached one end of a cable to the counter and the other end to the hole punch. The cable was long enough to loop to the floor.

3. Claimant got her foot tangled in the cord, tripped, and stumbled. She felt a sudden onset of pain in her knee. She finished working through the morning rush, went home early, and then telephoned her daughter to take her to a doctor. Employer directed her to seek treatment at a Post Falls urgent care center.

Post-Accident Medical Care: 2009

4. On September 22, Claimant reported to Kirk Hjeltness, M.D., at an immediate care center that she twisted her knee but did not strike it on anything. She reported a history of arthritis in her knee. Dr. Hjeltness treated complaints of low back and knee pain. X-ray of the knee showed no abnormality. He ordered light duty only and provided a knee brace. He and Maria Stamp, M.D., treated her conservatively at follow-up visits.

5. On October 25 Claimant visited Michael Ludwig, M.D. He noted an MRI showed osteoarthritis of the right knee four years earlier which did not require treatment. His initial history notes that Claimant reported that she twisted her knee but did not strike it on anything. On October 27 an MRI of Claimant's right knee showed chondromalacia and inflammation from chronic capsulitis, along with mild degenerative spurring and subluxation of the patella. He allowed only light duty with significant motion restrictions.

6. Dr. Ludwig visited Claimant at several follow-up visits. He noted slow improvement. On December 7 he discontinued physical therapy, finding Claimant unable to "make any significant goals." He opined her condition represented "a combination of her pre-existing chondromalacia of the patella with possible exacerbation."

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Medical Care: 2010-Hearing

7. On January 29, 2010, Spencer Greendyke, M.D., evaluated Claimant at Defendants' request. On examination, he noted slight restriction in range of motion and a positive McMurray's test with all other objective aspects of the examination being normal. Her subjective complaints were descriptive of a medial meniscus tear. He diagnosed a meniscus tear and opined Claimant's condition to be industrially related. He opined that the preexisting degeneration he observed in the diagnostic imaging did not contribute to her symptoms or need for surgery. He recommended arthroscopic meniscus surgery be performed.

8. Dr. Greendyke performed the surgery on February 18, 2010. Upon surgery, he found a medial meniscus tear and grade 3 chondromalacia. Also, hypertrophic synovitis was debrided.

9. Dr. Greendyke released Claimant to light duty with motion and position restriction effective March 8, 2010. She suffered a setback in physical therapy at the end of April and was taken off work entirely for about two weeks.

10. On May 14, 2010, a right knee MRI confirmed the postsurgical meniscus and noted capsulitis. It also found "medial capsular swelling overlies a thickened MCL and may reflect an impaction injury or the sequel of repetitive microtrauma."

11. On May 17, 2010, Dr. Greendyke reported slow progress with physical therapy. He attributed this complication to the delay between the injury and surgical repair. Nevertheless, he opined Claimant at MMI on her June 14, 2010 visit.

12. On June 16, 2010, Brian Tallerico, D.O., evaluated Claimant at Defendants' request. On examination, he noted slight limitation of motion and mild crepitus; all other findings were negative, including no limp, negative McMurray's, and no swelling. He opined the meniscal tear was related to the accident, but that the preexisting chondromalacia was not;

further, the chondromalacia was not temporarily or permanently aggravated by the accident. He recommended an injection and conservative care, but no surgery. He did not consider Claimant to be at MMI yet.

13. After Dr. Tallerico's IME report, Dr. Greendyke responded to Surety's claims specialist that he concurred with Dr. Tallerico's opinions.

14. Dr. Greendyke treated Claimant at additional follow-up visits. Treatment included injections. On August 23, 2010, he again opined Claimant was at MMI. He further opined that her right knee complaints were "due to anticipated natural progression of her pre-existing right knee medial compartment chondromalacia/early osteoarthritis."

15. A functional capacity evaluation (FCE) was performed on September 1, 2010. Claimant gave maximal effort and produced consistent results. Claimant's job was incompatible with her limitations on that date. The physical therapist recommended temporary restrictions.

16. On October 6, 2010, physical therapy began at Henry Downs' clinic. He provided continuing treatment, a release from work and some restrictions. Significantly, on examinations he consistently reported a negative McMurray's sign until Claimant's November 11, 2010, visit when it was reported as positive. At the November 16 visit, McMurray's sign was again negative.

17. On November 18-19, 2010, right knee MRI arthrograms showed "subacute/chronic residue of osteochondral injury" of the medial femoral condyle with underlying degeneration. It showed chondromalacia in the patellofemoral compartment as well.

18. Based upon this diagnostic imaging, Dr. Downs opined that surgical intervention was an appropriate consideration.

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19. On December 14, 2010, Joseph Bowen, M.D., evaluated Claimant's knee at Dr. Greendyke's request. He noted that she limped, showed minimal patellofemoral crepitus without pain, a positive McMurray's test, and medial knee pain. He reviewed diagnostic imaging and confirmed the presence of chondromalacia, swelling, and an osteochondral injury to the medial femoral condyle. He opined this was primarily degenerative. He acknowledged that total knee replacement was a possibility but favored conservative care, because of Claimant's young age and the mildness of the arthritis.

20. On December 27, 2010, Henry Downs, M.D., responded that he agreed with Dr. Bowen's opinions, including specifically, "surgery being last option."

21. On January 11, 2011, Dr. Bowen examined Claimant for a report of new pain following a "pop" in her knee. He noted no changes in her examination. Dr. Bowen spent considerable time with Claimant and Claimant's mother about additional treatment. He performed a steroid injection which provided relief.

22. On January 25, 2011, Dr. Downs examined Claimant and limited her from working. He allowed 2 hours work on February 17. On a March 4 visit, Dr. Downs noted no objective findings, including a negative McMurray's test.

23. On February 9, 2011, Douglas McInnis, M.D., reported on a February 2 evaluation of Claimant which he had conducted. On examination he found obvious swelling limited range of motion with pain, pain along the medial joint line and upon varus stress, mild crepitus and reduced strength on flexion and extension. He opined that Claimant suffered from medial compartment arthritis which, he stated, included "an osteochondral injury and a meniscus tear" which were "simply a portion or a part of the overall picture of an increasingly arthritic knee." The record erroneously identifies the left knee at this point, but the remainder

of the document correctly identifies the right knee. He declined to opine about causation relating to the industrial accident without a better history and prior medical records. He opined additional medical treatment was necessary. He equivocated about whether Claimant could return to work with or without restrictions. He opined she exhibited some exaggeration of symptoms, but that this was “entirely subconscious” and was anatomically consistent with her condition. He opined a total knee replacement was reasonable.

24. On March 16, 2011, Dr. McInnis reported: he had no specific treatment plan for Claimant; that the decision for a knee replacement was subjectively based; that a knee replacement was “palliative” rather than “curative” as “there are no curative treatments for knee arthritis” that because knee arthritis was not life threatening, he did not consider it absolutely necessary; that he could not anticipate a date for MMI; and that he could not impose restrictions without a functional capacity evaluation (FCE).

25. On March 25, 2010, Claimant appeared at Dr. Downs’ office to challenge his reports and findings. Claimant considered herself disabled and unable to return to work. Dr. Downs reported he had nothing more to offer Claimant. Physical therapy progress had stalled. Although he did not perform an examination, he considered her fixed and stable as of this visit.

26. On March 30, 2011, J. Craig Stevens, M.D., examined Claimant at Defendants’ request. On his exam he found no swelling, no crepitus, and no limitation on range of motion. He diagnosed a possible right knee contusion, resolved, with preexisting arthritis. Without much basis shown for doing so, he accuses her of drug seeking and secondary gain factors. He opined she needed no more treatment. He opined her arthritis may degenerate in the long term and require an “eventual knee replacement in the distant future.” He opined the condition

requiring that procedure was unrelated to the accident. He opined she suffered a permanent impairment of the right knee from the accident and subsequent menisectomy rated at 2% of the lower extremity. No apportionment for preexisting condition was appropriate. He opined she could return to work without restriction.

27. On April 4, 2011, Dr. Downs signed that he concurred with Dr. Stevens' opinions.

28. On May 2, 2012, Dr. McInnis opined that a total knee replacement surgery constitutes reasonable medical treatment for the right knee condition. Earlier stages of this condition were shown on the 2006 MRI. He further opined that "the indications [preexisting osteoarthritis] for that surgery were in fact hastened by the industrial accident."

29. In deposition, Dr. McInnis opined that Claimant had preexisting osteoarthritis in her right knee as diagnosed in 2006, and that it was symptomatically dormant although still progressing until the 2009 industrial accident, and that the 2009 industrial accident exacerbated the condition symptomatically, and that it "hastened" the need for a total knee replacement. He opined that she may or may not eventually have needed a total knee replacement for her arthritis but for the accident, but could not opine it probable one way or the other. He opined, more probably than not, that the 2009 accident caused a permanent aggravation to Claimant's chondromalacia.

Other History and Prior Medical Care

30. On November 6, 2006, a right knee MRI showed swelling and mild osteoarthritis. Claimant saw no physicians about right knee complaints between that date and the 2009 industrial accident.

DISCUSSION AND FURTHER FINDINGS OF FACT

31. The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956,

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793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996).

32. Claimant's demeanor was entirely credible, including her attempts to maintain emotional composure when testifying about her pain and lifestyle and economic changes associated with her injury. Claimant presents as a sincere, straightforward, and hard-working woman. The Commission finds no reason to disturb the Referee's findings and observations on Claimant's presentation or credibility

33. Claimant's many versions of how the accident happened, although somewhat inconsistent in one detail, are otherwise consistent; her several reports appear to be a function of normal variation in memory over time. These did not impair her credibility to the Referee and do not justify the *ad hominem* attacks upon her character made in Defendants' brief and Dr. Stevens' IME report. When the entirety of the medical record is considered in context, these reports of Claimant's so-called "drug-seeking behavior" are demonstrable exaggerations which attempt to smear and obscure the injury suffered by Claimant.

Causation

34. A claimant has the burden of proving the condition for which compensation is sought is causally related to an industrial accident. *Callantine v Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). Further, there must be evidence of medical opinion—by way of physician's testimony or written medical record—supporting the claim for compensation to a reasonable degree of medical probability. No special formula is necessary when medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *Paulson v. Idaho Forest Industries, Inc.*, 99 Idaho 896, 591 P.2d 143 (1979); *Roberts v. Kit Manufacturing Company, Inc.*, 124 Idaho 946, 866 P.2d 969 (1993). A claimant is required to establish a probable, not merely a possible,

connection between cause and effect to support his or her contention. *Dean v. Dravo Corporation*, 95 Idaho 558, 560-61, 511 P.2d 1334, 1336-37 (1973).

35. The proposition that Claimant's arthritis and chondromalacia is preexisting is undisputed. This degenerative condition was not caused by the accident. However, this does not end the inquiry.

36. Dr. McInnis opined the condition was permanently exacerbated and the need for a total knee replacement was hastened by the 2009 industrial accident. Having first seen Claimant well over one year after the accident, Dr. McInnis is not in the best position to opine, but the absence of medical treatment between the 2006 MRI and the date of the accident is strong evidence in support of his opinion.

37. Dr. Greendyke's opinion is persuasive that Claimant's knee symptoms which continued beyond the date of the meniscus surgery were due substantially to the delay in surgically treating the injury. Initially Dr. Greendyke became involved as an IME physician. There exists an inherent complication of perspective when an IME physician volunteers to become and is authorized to treat a patient. This is reflected in the medical records in Dr. Greendyke's attitude toward Claimant after he declared her to be at MMI, only to be instructed by Surety to treat her further after Dr. Tallerico's IME in June 2010.

38. Dr. Stevens' IME report notes findings on examination which are inconsistent with the examination findings of treating physicians who report objective examination findings both immediately before and after the date of Dr. Stevens' evaluation. Moreover, Dr. Stevens unduly focuses on and exaggerates notes of treating physicians about Claimant's use of pain medications in order to discredit her valid subjective complaints. These subjective complaints have been reasonably consistent over time and were expressly found by

Dr. Greendyke to be consistent with his expectations for a person suffering from the diagnoses which have been identified.

39. In this, there is a conflict in the medical evidence on the question of whether or not Claimant's right knee osteoarthritis (the condition for which knee replacement surgery has been recommended) was caused, aggravated or accelerated by the subject accident. There appears to be good agreement that the subject accident did cause Claimant's right medial meniscus tear. However, medical opinion diverges on the question of whether the right medial meniscus tear is implicated in accelerating Claimant's need for a total knee replacement.

40. Dr. Tallerico evaluated Claimant on June 16, 2010. He proposed that although Claimant's medial meniscus tear was work related, her underlying chondromalacia was not related to, or aggravated by, the industrial accident. In a letter dated July 23, 2010, Dr. Greendyke expressed his concurrence with the recommendations and findings made by Dr. Tallerico. Also, in a chart note dated August 23, 2010, Dr. Greendyke stated that Claimant's ongoing right knee complaints were due to anticipated natural progression of her pre-existing right knee medial compartment chondromalacia/early arthritis.

41. At Surety's request, Claimant underwent an independent medical evaluation performed by Craig Stevens, MD, on March 30, 2011. Dr. Stevens opined that Claimant suffered from pre-existing osteoarthritis of the right knee, but that this condition was not permanently aggravated or fundamentally changed as a result of the subject accident. Although he recognized that Claimant might require eventual knee replacement surgery, he could not say, on a more probable than not basis, that the need for such surgery could somehow be related to the subject accident. Drs. Greendyke, Bowen and Downs expressed their agreement with Dr. Stevens' conclusions.

42. Dr. McInnes is the only physician who has opined that a causal link does exist between the subject accident and the Claimant's need for a total knee replacement. Dr. McInnis testified that although Claimant's osteoarthritis assuredly predated the subject accident, it is his belief that the subject accident aggravated or accelerated Claimant's underlying arthritis and has "hastened" her need for knee replacement surgery. However, for the following reasons, we find Dr. McInnis' opinion less persuasive than those of Claimant's other treating/evaluating physicians.

43. Although Dr. McInnis opined that the subject accident accelerated or aggravated Claimant's underlying arthritis, he also acknowledged that the acceleration of Claimant's underlying arthritis could occur spontaneously. (McInnis Depo., p. 14/4-17). He candidly acknowledged that he did not have the ability to state definitively that it was the accident versus spontaneous worsening that is responsible for the current state of Claimant's arthritic knee. After acknowledging that the acceleration of Claimant's underlying arthritis could occur spontaneously, Dr. McInnis testified that it continued to be his belief that the subject accident was responsible for causing the acceleration. He appears to have based this conclusion on the fact that although Claimant had evidence of right knee arthritis predating the subject accident, this arthritis was, by history, more or less quiescent in the years immediately preceding the 2009 accident. However, Dr. McInnis was unable to explain the mechanism by which the 2009 accident was thought to have accelerated/aggravated the underlying condition. (McInnis Depo., pp. 14/21-15/18). Finally, on the question of whether or not the subject accident caused the Claimant to require total knee replacement surgery sooner than she would otherwise have needed it, Dr. McInnis candidly admitted that Claimant might now have the same requirements for treatment even if the subject accident had not occurred. However, he found it is impossible to

speculate in this regard since the accident did occur. (McInnis Depo., pp. 26/19-27/11).

44. Based on the foregoing, we are unable to conclude that Dr. McInnis' testimony is more persuasive than that offered by Claimant's other treating/evaluating physicians. Claimant has failed to meet her burden of demonstrating that it is more likely than not that her 2009 accident caused, aggravated or accelerated Claimant's underlying arthritic condition such that it can be said that Claimant's need for further medical treatment related to her arthritic knee is causally related to the subject accident.

Temporary Disability

45. Eligibility for and computation of temporary disability benefits are provided by statute. Idaho Code §72-408, *et. seq.* Upon medical stability, eligibility for temporary disability benefits does not continue. *Jarvis v. Rexburg Nursing*, 136 Idaho 579, 38 P.3d 617 (2001).

46. Surety paid TTD benefits through March 30, 2011, the date Dr. Stevens pronounced Claimant at MMI. The parties do not dispute amounts paid to that date. The issue of temporary disability is dependent upon a finding that she was not at MMI on that date and that she is entitled to the total knee replacement requested.

47. Because of the analysis regarding causation above, we find Claimant failed to show she is or will become entitled to additional TTD benefits.

Medical Care

48. We have found that the subject accident is not responsible for causing or accelerating Claimant's underlying degenerative arthritis of the right knee. It is for treatment of this condition that knee replacement surgery has been recommended for Claimant. Having failed to establish a causal connection between the subject accident and her progressive right knee

osteoarthritis, Claimant is not entitled to further medical treatment for that condition, including the proposed right knee replacement surgery.

CONCLUSIONS AND ORDER

1. Claimant failed to show she is entitled to the additional medical benefit of a total knee replacement—she failed to show that the condition for which she seeks a total knee replacement was likely caused, permanently exacerbated, or hastened by the 2009 industrial accident;

2. The issue of temporary disability benefits arising from a proposed entitlement to a total knee replacement is moot.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 23rd day of May, 2013.

INDUSTRIAL COMMISSION

/s/_____
Thomas P. Baskin, Chairman

Participated but did not sign

R.D. Maynard, Commissioner

/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __23rd__ day of _____May_____, 2013, a true and correct copy of FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER were served by regular United States Mail upon each of the following:

STEPHEN J. NEMEC
1626 LINCOLN WAY
COEUR D'ALENE, ID 83814

E. SCOTT HARMON
P.O. BOX 6358
BOISE, ID 83707

_ /s/ _____